IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.3385 OF 2006
IN
SUIT NO.465 OF 2006

Smt. Bhadravati wd/o Hemendra Dattani ..Plaintiff.
Vs.
Smt. Prabhavati wd/o Mangaldas Thakkar & Ors. ..Defendants.
...

Mr. Bharat Vaishnawa i/b Bharat Vaishnawa & Co. for the Plaintiff.

Mr. Pravin Samdani, Senior Advocate with Mr. Prateek Sakseria i/b Mr. Pankaj Shah for Defendants 1 to 3 and 7.

Mr. Rishabh Shah i/b Mr. U.V. Singh for Defendants 5 and 6.
...

CORAM: DR. D.Y. CHANDRACHUD, J.

19th October, 2006.

P.C. :

1. In a suit for partition, an application has been made for the grant of ad interim relief in terms of prayer clause (b) of the Notice of Motion. By prayer clause (b) the Plaintiff seeks an injunction against Defendants 1, 2, 3 and 7 from transferring, assigning, parting with the possession of or accepting any surrender of tenancies in respect of the properties descried in Exh. B to the plaint.

2. The suit was instituted before this Court on 15th October, 2005. An application for the grant of ad interim relief was moved for the first time almost a year thereafter in October 2006. The delay is unexplained.

3. The deceased, Mangaldas expired on 22nd October, 1988. The schedule annexed to the plaint consists of three properties; the first being a tenanted room bearing No.35/6, the second being a plot of land which is described as Plot B and the third being a plot of land which is described as Plot A. In so far as the tenanted room is concerned, in accordance with the provisions of Section 5(11)(c) of the the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the tenancy was liable to devolve on a member of the deceased tenant's family residing with the tenant at the time of his death. The Plaintiff is a daughter born from the first marriage of the deceased and was admittedly not residing with the tenant at the time of his death. In so far as Plot B is concerned, the undisputed position is that it was taken on lease by the deceased and was sublet to the First Defendant, the second wife on 6th November, 1956. The First Defendant executed several registered deeds of mortgage. The plaint itself proceeds

on the basis that on 29th October, 1984 a deed of conveyance was executed in the name of the Seventh Defendant. The Seventh Defendant therefore acquired the right, title and interest in respect of Plot B during the life time of the deceased. A structure was constructed on Plot B. In a suit between the First Defendant on the one hand and the Second, Third, Fourth and Seventh Defendants on the other hand, a consent decree was passed on 29th April, 1993. Thus, prima facie, during his life time the deceased had ceased to have any interest in respect of Plot B which came to be transferred by a registered deed of conveyance to the Seventh Defendant.

4. In so far as Plot A is concerned, the material averment in paragraph 6 of the plaint is that the aforesaid plot is purchased by the deceased together with five other purchasers. The deceased had a 1/6th share therein and the Plaintiff as one of the daughters from the first marriage would prima facie have a 1/66th share in Plot A. The Court has been informed that Plot A has been fully constructed and developed and flats have already been sold. A co-operative society has been formed in respect of the purchasers of flats on the building constructed on Plot A. The ends of justice

would be met if a direction is issued to the effect that in the event that Defendants 1, 2, 3 and/or 7 intend to deal with their right, title and interest in respect of Plot A, they shall furnish advance notice of at least seven working days to the Plaintiff so as to enable the Plaintiff to move this Court for appropriate orders that will protect her share in respect thereof. Learned counsel appearing on behalf of the aforesaid Defendants fairly does not oppose a direction to this limited extent. Save and except for the aforesaid direction, ad interim relief is refused.